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2 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084
3 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v.
4 School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services,
5 PAB No. D93-053 (1994).

7 **II. FINDINGS OF FACT**

8 2.1 Appellant Edward Cavin was a Social Worker (SW) 2 and a permanent employee of
9 Respondent Department of Social and Health Services (DSHS) in the Vancouver office of the
10 Division of Children and Family Services (DCFS). Appellant and Respondent are subject to
11 Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC.
12 Appellant filed a timely appeal with the Personnel Appeals Board on August 15, 2001.

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14 2.2 Appellant had been employed by DCFS since July 1997. Appellant had a history of
15 corrective and disciplinary actions including:

- 16 • a demotion in March 2001 for neglect of duty, gross misconduct and willful
17 violation of agency rules and regulations for making a false entry into a client's
18 case record and being untruthful to his supervisor when questioned about the
19 issue (PAB Case No. DEMO-01-0008);
- 20 • a reduction in salary in December 2000 for neglect of duty, insubordination and
21 willful violation of agency policy for delivering an Individual Service and Safety
22 Plan to the Attorney General's Office that was not approved or signed by his
23 supervisor (PAB Case No. RED-01-0004);
- 24 • a reduction in salary dated October 2, 2000, for neglect of duty and willful
25 violation of agency policy for his failure to report an allegation of child abuse
26 within 48 hours; and
- a letter of reprimand dated November 14, 2000, for violating the department's
policy regarding the use of the DSHS electronic messaging system and the
Internet.

1 2.3 By letter dated August 3, 2001, Respondent notified Appellant of his dismissal, effective
2 August 20, 2001. Respondent charged Appellant with neglect of duty, gross misconduct and willful
3 violation of published employing agency or department of personnel rules or regulations.
4 Respondent alleged that while transporting a four-year old foster child, DJ, in a state vehicle,
5 Appellant removed DJ from his car seat, allowed DJ to sit on his lap and allowed him to steer the
6 state vehicle for approximately 1/10th of a mile down DJ's foster parent's driveway.

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8 2.4 Appellant was aware of his duty to abide by agency policies and procedures and he had
9 received training in the importance of the proper use of child passenger seats and safety restraints in
10 state vehicles.

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12 2.5 On March 31, 1997, Ed Cote, Area Manager for the Vancouver DCFS, issued a revised
13 Vehicle Procedure. Under general operating rules, the procedure states, in relevant part: "SEAT
14 BELTS WILL BE FASTENED BY ALL VEHICLE OCCUPANTS PRIOR TO THE VEHICLE
15 BEING MOVED."

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17 2.6 On August 31, 2000, Appellant attended Child Safety Seat Training. The training focused
18 on the proper use of child car seats. The *Children in Motion* resource handbook provided for the
19 training emphasized the importance of children being properly restrained when riding in a vehicle.
20 It is not acceptable to allow a child to sit on an adult's lap and be restrained by the adult's seat belt.

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22 2.7 DJ was a four-year old foster child. Maryann Foster was DJ's social worker. Ms. Foster
23 removed DJ from his home because of neglect, abuse, and alcohol and drug use in the home. Ms.
24 Foster placed DJ in Betty Harmon's receiving home. He was in the Harmon home from
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1 approximately April 10, 2001 to May 9, 2001. DJ was then placed in Andrea and Grant Stayberg's
2 foster home.

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4 2.8 Between approximately April 10 and May 9, 2001, Appellant was assigned to assist Ms.
5 Foster with transporting DJ to and from the Harmon home to a headstart therapeutic child
6 development program. The transport took approximately 30-40 minutes each way. Appellant was
7 not assigned any other responsibilities in regard to DJ or his family. While transporting DJ,
8 Appellant played games with him to teach him about the importance of wearing a seat belt and
9 about the actions to be taken at different traffic signals.

10
11 2.9 On approximately May 1, 2001, Appellant told Ms. Foster that he allowed DJ to sit on his
12 lap and steer the state vehicle down the driveway to the Harmon home. Ms. Foster confirmed with
13 DJ that Appellant let him drive the car in the driveway. After Ms. Foster thought about the agency's
14 responsibility for dependent children and the ramifications of being a state worker in a state vehicle
15 with a child in state foster care, she decided that she needed to report Appellant's actions.

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17 2.10 Marian Gilmore was Appellant's supervisor. She was also Ms. Foster's supervisor. Ms.
18 Foster credibly testified that Ms. Gilmore had high expectations for all of her subordinates and that
19 she treated her subordinates fairly and consistently.

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21 2.11 On May 18, 2001, Ms. Foster told Ms. Gilmore that Appellant had allowed DJ to sit on his
22 lap and steer the state vehicle down the driveway to the Harmon home. After confirming with Ms.
23 Foster that she was not joking, Ms. Gilmore spoke to Appellant. Appellant admitted that he had
24 allowed DJ to sit on his lap and steer the state vehicle. Appellant said that he stopped the car,

1 removed DJ from his car seat in the back seat of the car, placed DJ on his lap in the front seat, and
2 allowed him to steer the vehicle down the Harmon driveway.

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4 2.12 On May 23, 2001, Ms. Gilmore initiated a Conduct Investigation Report (CIR). Ms.
5 Gilmore was concerned about DJ's safety and she felt that Appellant's actions were contrary to the
6 agency policy requiring the proper use of safety restraints in state vehicles.

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8 2.13 Although Appellant had admitted his actions, by memorandum dated June 1, 2001, he
9 responded to the CIR and stated that the allegation was unsubstantiated, vague, did not include a
10 specific date or time, and that there were no witnesses to the alleged incident.

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12 2.14 Edith Hitchings, Social and Health Program Manager 3 was responsible for conducting the
13 CIR fact-finding investigation. She was not responsible for determining whether misconduct
14 occurred. As part of her fact-finding, Ms. Hitchings contacted Appellant to ask if he was available
15 to meet with her, but Appellant replied by e-mail that he was not willing to do so. Ms. Hitchings
16 spoke with Ms. Foster, Ms. Gilmore, Ms. Harmon, and Ms. Stayberg, and she attempted to speak
17 with DJ. Ms. Harmon confirmed the information that Ms. Foster and Ms. Gilmore had provided
18 and said that Appellant told her that he had stopped the car and let DJ sit on his lap and drive the car
19 down her driveway. Ms. Hitchings completed her fact-finding on June 13, 2001, and determined
20 that Appellant let DJ sit on his lap and steer the state vehicle for a distance of 1/10th of a mile.

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22 2.15 Ed Cote was Area Manager for the Vancouver DCFS office. Mr. Cote received Ms.
23 Hitching's report and then conducted the administrative review of the CIR. He asked Appellant to
24 meet with him on June 22, 2001, but Appellant did not appear for the meeting. Therefore, Mr. Cote
25 reviewed all of the CIR investigation material, various correspondence and e-mails from Appellant,

1 and spoke with Ms. Gilmore. He determined that the incident took place and that misconduct
2 occurred. He forwarded his report to Kenneth Nichols, the appointing authority.

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4 2.16 Mr. Nichols considered the information from the CIR investigation and reviewed
5 Appellant's past history. Prior to determining the level of discipline, Mr. Nichols met with
6 Appellant and his representative. Mr. Nichols considered Appellant's defense that a conflict
7 between him, Ms. Gilmore, and Mr. Cote was the reason for the CIR; yet, Appellant admitted his
8 actions in regard to DJ. Mr. Nichols concluded that Appellant failed to ensure DJ's safety when he
9 allowed DJ to be out of his child seat and not properly restrained. Mr. Nichols further concluded
10 that Appellant's actions were contrary to the mission of the agency to protect children, contrary to
11 agency policies requiring compliance with laws, rules and policies, and contrary to the standard of
12 conduct expected by the public. He determined the Appellant's actions were not ethical and
13 undermined the public trust placed in the department.

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15 2.17 Although Mr. Nichols felt that Appellant was personable and had a strong desire to help
16 people, he concluded that Appellant exhibited problematic judgment and engaged in a pattern of
17 neglect of duty and inappropriate behavior that could potentially cause harm to a child. After
18 reviewing Appellant's history of disciplinary actions, Mr. Nichols concluded that dismissal was
19 appropriate. He felt that Appellant was a high risk, high maintenance employee and that his work
20 could not be trusted.

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22 2.18 DSHS Policy 6.04 establishes standards and guidelines for ethical employee conduct. The
23 policy states, in part:

- 24 A. DSHS requires employees to perform duties and responsibilities in a manner that
25 maintains standards of behavior that promote public trust, faith, and confidence.
26 Specifically, employees shall:

1. Strengthen public confidence in the integrity of state government by demonstrating the highest standards of personal integrity, fairness, honesty, and compliance with laws, rules, regulations and departmental policies.

2.19 Appellant admits the incident occurred. Additionally, after placing DJ in his lap, Appellant admits that he fastened the adult seat belt around both of them and while DJ believed he was driving the car, Appellant remained in control of the vehicle. Appellant was using the activity as a treat or reward for DJ for the good work he had done in learning basic automobile and traffic safety rules. Furthermore, although Appellant had no responsibility to speak to DJ's parents, when he saw DJ's father at the therapeutic child development center, he told him of his intention to reward DJ. DJ's father agreed the DJ would enjoy driving the car.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant failed to abide by his responsibility to protect DJ when he failed to ensure that he was properly seated and secured in a child safety seat in the state vehicle prior to the vehicle being moved. Respondent contends that no matter how good Appellant's intentions were and regardless of whether DJ's father agreed, Appellant's actions constituted a blatant violation of policy and failure to abide by the laws, rules, regulations and policies regarding use of child safety seats. Respondent further contends that Appellant's actions were intentional and willful; constituted a neglect of duty; showed a lack of common sense, poor judgment and poor social work; and rose to the level of gross misconduct. Respondent asserts that Appellant's history with the agency demonstrates that he lacks good judgment and that he employs a pattern of doing things his way rather than as required by agency policies and procedures. Respondent argues that Appellant has violated the trust placed in him by the agency and by the public to act in the best interest of children. Respondent contends that dismissal was the appropriate sanction.

1 3.2 Appellant asserts that he and Ms. Gilmore have very different views of things, that she did
2 not like him, that she repeatedly blocked his attempts to transfer out of her unit, and that they had a
3 horrible relationship. Appellant contends that his poor relationship with Ms. Gilmore was the
4 reason she initiated the CIR. Appellant argues that he acted in best interests of DJ, that he was
5 doing something special for him, that he did the common sense thing by asking DJ's parents if it
6 was alright to reward DJ in this way, and that before putting the vehicle in motion, he safely
7 secured both he and DJ in the front seat of the vehicle by using the driver's seat belt. Appellant
8 asserts that his actions did not violate policy, laws, rules, regulations or procedures. Appellant
9 argues that under the totality of the circumstances, dismissal is too severe.

10 11 **IV. CONCLUSIONS OF LAW**

12 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
13 herein.

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15 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
16 the charges upon which the action was initiated by proving by a preponderance of the credible
17 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
18 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
19 Corrections, PAB No. D82-084 (1983).

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21 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
22 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
23 of Social & Health Services, PAB No. D86-119 (1987).

1 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
2 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant
3 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's
4 interest or standards of expected behavior.

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6 4.5 Willful violation of published employing agency or institution or Personnel Resources
7 Board rules or regulations is established by facts showing the existence and publication of the rules
8 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
9 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &
10 Health Services, PAB No. D93-053 (1994).

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12 4.6 Respondent has met its burden of proof that Appellant neglected his duty, willfully violated
13 agency policy, and that his actions rose to the level of gross misconduct. Appellant neglected his
14 duty to abide by agency policies and expectations and to act in the best interest of DJ. Appellant
15 exhibited extremely poor judgment. DJ was under the guardianship of the state at the time of the
16 incident; therefore, Appellant's reliance on DJ's father's consent to reward DJ, in a fashion contrary
17 to agency policy, was sorely misplaced. Appellant was aware of agency policies and expectations,
18 yet he willfully and intentionally violated them. Appellant's misconduct irreparably harmed the
19 fundamental trust placed in him by the agency and public. Appellant's intentional decision to
20 engage in an activity that constituted misconduct had no connection to his relationship with his
21 supervisor.

22
23 4.7 Under the totality of the proven facts and circumstances presented here, Respondent has met
24 its burden of proving the charges in the disciplinary letter. In light of the flagrant and serious nature
25 of Appellant's misconduct and his extensive history of prior disciplinary and corrective actions,
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1 Respondent has established that the disciplinary sanction of dismissal is appropriate. Therefore, the
2 appeal should be denied.

3

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V. ORDER

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NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Edward Cavin is denied.

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DATED this _____ day of _____, 2002.

7

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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René Ewing, Member

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